

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 2520

INTRODUCER: Governmental Oversight and Accountability Committee, Senator Deutch and Senator Aronberg

SUBJECT: Entities Doing Business With Iran/Restrictions

DATE: April 6, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pardue	Pardue	MS	Fav/1 amendment
2.	Wilson	Wilson	GO	Fav/CS
3.			CM	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Senate Bill 2520 prohibits the state from entering into, awarding, or renewing a contract or purchasing agreement for commodities or contractual services with or receiving or soliciting proposals from any business entity doing business directly with Iran.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

The United States has instituted a number of sanctions against the nation of Iran as a result of its state support of terrorism, human rights violations, and pursuit of a policy of nuclear development. The situation is summarized in the following excerpt from a recent Congressional Research Service report:

Iran is subject to a wide range of U.S. sanctions, restricting trade with, investment, and U.S. foreign aid to Iran, and requiring the United States to vote against international lending to Iran.

Several laws and Executive Orders authorize the imposition of U.S. penalties against foreign companies that do business with Iran, as part of an effort to persuade foreign firms to choose between the Iranian market and the much larger U.S. market. Most notable among these sanctions is a ban, imposed in 1995, on U.S. trade with and investment in Iran. That ban has since been modified slightly to allow for some bilateral trade in luxury and humanitarian-related goods. Foreign subsidiaries of U.S. firms remain generally exempt from the trade ban since they are under the laws of the countries where they are incorporated. Since 1995, several U.S. laws and regulations that seek to pressure Iran's economy, curb Iran's support for militant groups, and curtail supplies to Iran of advanced technology have been enacted. Since 2006, the United Nations Security Council has imposed some sanctions primarily attempting to curtail supply to Iran of weapons-related technology but also sanctioning some Iranian banks.

U.S. officials have identified Iran's energy sector as a key Iranian vulnerability because Iran's government revenues are approximately 80% dependent on oil revenues and in need of substantial foreign investment. A U.S. effort to curb international energy investment in Iran began in 1996 with the Iran Sanctions Act (ISA), but no firms have been sanctioned under it and the precise effects of ISA, as distinct from other factors affecting international firms' decisions on whether to invest in Iran, have been unclear. International pressure on Iran to curb its nuclear program has increased the hesitation of many major foreign firms to invest in Iran's energy sector, hindering Iran's efforts to expand oil production beyond 4.1 million barrels per day, but some firms continue to see opportunity in Iran.

Some in Congress express concern about the reticence of U.S. allies, of Russia, and of China, to impose U.N. sanctions that would target Iran's civilian economy. In an attempt to strengthen U.S. leverage with its allies to back such international sanctions, several bills in the 111th Congress would add U.S. sanctions on Iran. For example, H.R. 2194 (which passed the House on December 15, 2009), H.R. 1985, H.R. 1208, and S. 908 would include as ISA violations selling refined gasoline to Iran; providing shipping insurance or other services to deliver gasoline to Iran; or supplying equipment to or performing the construction of oil refineries in Iran. Several of these bills would also expand the menu of available sanctions against violators. A bill passed by the Senate on January 28, 2010 (S. 2799), contains these sanctions as well as a broad range of other measures against Iran, including reversing previous easing of the U.S. ban on trade with Iran.

In light of the strength of the democratic opposition in Iran, one trend in Congress is to alter some U.S. sanctions laws in order to facilitate the democracy movement's access to information, and to target those persons

or institutions in the regime who are committing human rights abuses against protesters.¹

State Sponsors of Terrorism

Countries which are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as “State Sponsors of Terrorism” and are subject to sanctions under the Export Administration Act², the Arms Export Control Act,³ and the Foreign Assistance Act.⁴ The four main categories of sanctions resulting from designations under these acts are: restrictions on U.S. foreign assistance, a ban on defense exports and sales, certain controls over exports of dual use items, and miscellaneous financial and other restrictions.⁵ Some of the miscellaneous restrictions include opposition to loans by the World Bank and other financial institutions, removal of diplomatic immunity to allow victims of terrorism to file civil lawsuits, denial of tax credits to companies and individuals for income earned in named countries, authority to prohibit U.S. citizens from engaging in transactions without a Treasury Department license, and prohibition of Department of Defense contracts above \$100,000 with companies controlled by terrorist-list states.⁶

The four countries currently designated by the U.S. Secretary of State as “State Sponsors of Terrorism” are Cuba, Iran, Sudan, and Syria.⁷

The Voice Act

In addition, Congress recently directed the President of the United States to submit a report on non-Iranian persons, including corporations with United States subsidiaries, that have knowingly or negligently provided hardware, software, or other forms of assistance to the Government of Iran that has furthered Iran’s efforts to filter online political content, disrupt cell phone and Internet communications, and monitor the online activities of Iranian citizens.⁸

State Law in Florida

Section 288.855, F.S., prohibits the export or sale of any goods or services to a foreign country in violation of federal law and restricts interference with foreign export except as otherwise prohibited by law.

¹ Congressional Research Service Report RS20871, *Iran Sanctions*, February 2, 2010.

² Section 6(j), U.S. Export Administration Act.

³ Section 40, U.S. Arms Export Control Act.

⁴ Section 620A, U.S. Foreign Assistance Act.

⁵ U.S. Department of State website, <http://www.state.gov/s/ct/c14151.htm>, Office of Coordinator for Counterterrorism, State Sponsors of Terrorism, last viewed on March 12, 2010.

⁶ U.S. Department of State website, <http://www.state.gov/s/ct>, Country Reports on Terrorism, last viewed on March 12, 2010.

⁷ See Footnote 5.

⁸ P.L. 111-84, October 28, 2009.

III. Effect of Proposed Changes:

Senate Bill 2520 prohibits the state from entering into, awarding, or renewing a contract or purchasing agreement for commodities or contractual services with or receiving or soliciting proposals from any business entity doing business directly with Iran.

The bill defines the term “business entity” to mean any proprietorship, firm, enterprise, franchise, organization, association, corporation, partnership, joint venture, limited partnership, limited liability company, trust or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates or business associations or any self-employed individual, whether fictitiously named or not, which does business in the State of Florida for the purpose of making a profit.

In addition, the bill defines the term “doing business with Iran” to mean engaging in commerce in any form with Iran, including but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

Senate Bill 2520 provides for the removal of the prohibition of doing business with Iran if the Congress or the President clearly states that such prohibition interferes with the conduct of United States foreign policy.

The bill directs the Department of State in conjunction with the Departments of Management Services, Business and Professional Regulation, and Legal Affairs and the State Board of Administration to develop a mechanism for identifying business entities doing business with the nation of Iran and for enforcing the prohibition.

The bill provides an effective date of October 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In *National Foreign Trade Council, Inc. v. Giannoulis*,⁹ the Federal District Court held unconstitutional the Illinois Act to End Atrocities and Terrorism in the Sudan (Act), which imposed various restrictions on the deposit of state funds in financial institutions whose customers have certain types of connections with Sudan and on the investment of public pension funds in Sudan-connected entities. The court discussed the following three arguments asserting that the Act violated the U.S. Constitution:

- The Act violates the Supremacy Clause because it is preempted by federal law governing relations with Sudan;
- The Act interferes with the federal government's ability to conduct foreign affairs; and
- The Act violates the Constitution's Foreign Commerce Clause.¹⁰

The Act amends the Deposit of State Moneys Act and the Illinois Pension Code to prohibit certain investments in the government of Sudan and companies doing business in or with Sudan. The Act's effect on the Illinois Pension Code is somewhat analogous to this bill. The Act amends the Illinois Pension Code in pertinent part to prohibit the fiduciary of any pension fund established under the Code from investing in any forbidden entity. A "forbidden entity" is essentially any company transacting business in Sudan, lending or investing in Sudan, or domiciled in Sudan.

The court held that the Act did not violate the Supremacy Clause or interfere with the federal government's ability to conduct foreign affairs. However, the court did hold that the Act violates the Constitution's Foreign Commerce Clause.

Foreign Commerce Clause

The court noted that "State regulations that facially discriminate against foreign commerce are *per se* invalid."¹¹ Additionally, "nondiscriminatory state regulations affecting foreign commerce violate the Foreign Commerce Clause if they create a substantial risk of conflicts with foreign governments or impede the federal government's ability to speak with one voice in regulating commercial affairs with foreign states."¹²

The opinion noted that courts are split on the issue of whether the market participation exception to the Commerce Clause applies to the Foreign Commerce Clause. However, the court did not have to resolve the issue because it found that Illinois is not acting exclusively as a market participant through its enforcement of the Illinois Sudan Act. The act affects the pension funds of municipal entities, which are not part of the state for purposes of the market participant doctrine. Thus, with regards to the pension funds of the municipal entities, the state of Illinois is a regulator. Therefore, even if the market

⁹ *Nat'l Foreign Trade Council, Inc. v. Giannoulis*, No. 06 C 4251, 2007 WL 627630 (N.D. Ill. Feb. 23, 2007).

¹⁰ *Id.* at *5.

¹¹ *Id.* at *15 (citing *Piazza's Seafood World, LLC v. Odom*, 448 F.3d 744, 750 (5th Cir. 2006)).

¹² *Id.*

participant doctrine applies to the Foreign Commerce Clause, it would not apply in this situation.

However, in view of current United States foreign policy and sanctions imposed on the nation of Iran, it is arguable that the prohibition imposed in Senate Bill 2520 supports current national policy and does not violate the Foreign Commerce Clause. The bill includes a provision for the removal of the prohibition of doing business with Iran if the Congress or the President clearly states that such prohibition interferes with the conduct of United States foreign policy.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will adversely affect those business entities doing business in Florida for profit that also engage in business with the nation of Iran.

C. Government Sector Impact:

The cost to identify those business entities currently engaging in business with Iran is indeterminate at this time.

The State Board of Administration states in its analysis of Senate Bill 2520 that "...the bill provides that the SBA could not contract with or renew a contract with any business entity directly or indirectly doing business with Iran. This language would include the SBA investment managers who are investing in businesses doing business in Iran. This means the SBA would be prohibited from doing business with most, if not all, of our money managers. This could effectively curtail or even preclude a large part of the SBA's investment activity."¹³ This issue is addressed by the amendment traveling with this bill (see Amendments section VIII B. of this analysis)

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of State assumes that the provisions of this bill will not require actions or activities beyond its ministerial role. Entities registering with the Division of Corporations & Commercial Filings would be required to disclose whether the entity conducts business with Iran. That information would then be made available to other agencies. The Department of State further assumes that enforcement activities required by the bill would be the responsibility of the

¹³ State Board of Investment Bill Analysis of SB 2520, March 5, 2010.

Department of Legal Affairs in conjunction with the Department of Management Services.¹⁴ Such division of responsibilities will necessarily need to be negotiated among the responsible parties designated in the bill.

In early March 2010, the Board of Administration provided legislative staff with a list of entities doing business with the Islamic Republic of Iran that it obtained as a subscriber to an investment consulting service, RiskMetrics Group. The list, submitted in its original form with company identifiers and country of domicile was later expanded, on March 22, to include the means by which the consulting service obtained the business intelligence on Iran.¹⁵ The RiskMetrics analysis indicated a substantial amount of the commerce involved indirect commercial transactions in which products are sold to a distributor for resale in that country. Few of these products implicate strategic materiel, industrial conversions to military use, or non-civilian purposes. A number of well known United States companies would be disqualified under the terms of the bill in its present form – Coca-Cola, General Electric and Ford, to name but three – and the reach would extend to the Swiss multi-national corporation Nestle which provides nutrition, health, and wellness products to overseas markets. Bottled water from a spring source in Florida and marketed under the brand name of Zephyrhills is part of the assortment of regional and national Nestle beverages. Commercial trade with Iran on an import or export basis is permitted if a specific or general license is granted by the U.S. Department of the Treasury's Office of Foreign Assets Control or if it meets a low dollar threshold or other definable purposes.¹⁶

The effect of using the phrase “directly or indirectly” in the bill places in jeopardy the domestic and foreign equity holdings the board has in its thirty-six investment mandates. Some of these holdings are direct ownership of securities in the named companies while others are indirectly, or passively, owned through index funds over which the board can exercise limited discretion. A literal interpretation of the term “indirectly” could force the board to divest itself of securities in which the transaction at risk is the sale or receipt of goods to or from a distributor that has a business presence in Iran otherwise unaffected by federal sanctions. The amendment adopted in the previous committee nullifies some of this circumstance but it does so at the expense of rendering the bill only a restatement of the status quo. Eliminating the word “indirectly” would accomplish a purpose of limiting direct, unlicensed trade while not impairing transactions which are otherwise legal.

¹⁴ Department of State Bill Analysis of SB 2520, undated.

¹⁵ Electronic mail communication from Mike McCauley to Ron Poppell dated March 22, 2010. Information on file with Governmental Oversight and Accountability Committee.

¹⁶ United States Department of the Treasury, Office of Foreign Assets Control, *Iran: What You Need to Know About U.S. Economic Sanctions, An overview of OFAC Regulations involving Sanctions against Iran*, 31 C.F.R., Part 560; cited at <http://www.ustreas.gov/offices/enforcement/ofac/programs/iran/iran.pdf>.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on April 6, 2010:

- Incorporates the traveling amendment from the prior committee providing for the preservation of the Board of Administration fiduciary duties in its investment decisions and deletes the phrase “or indirectly” from the original such that the prohibition on trade with Iran affects only direct , not indirect, commerce.

- B. **Amendments:**

None.